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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

MICHAEL ANTHONY BLANKENSHIP,

Defendant and Appellant.

B289457

(Los Angeles County
Super. Ct. No. MA072492)

APPEAL from a judgment of the Superior Court of Los Angeles County. Daviann L. Mitchell, Judge. Affirmed in part, conditionally reversed in part and remanded with directions.

Jeffrey J. Douglas, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Scott A. Taryle and Christopher G. Sanchez, Deputy Attorneys General, for Plaintiff and Respondent.

Michael Anthony Blankenship (appellant) was charged with kidnapping (Pen. Code, § 207, subd. (a); count 1),¹ possession of a firearm by a felon (§ 29800, subd. (a)(1); count 2), and unlawful possession of ammunition (§ 30305, subd. (a)(1); count 3). It was alleged that he had served a prior prison term within the meaning of section 667.5, subdivision (b). The jury convicted appellant on counts 1 and 3. Count 2 was dismissed after the trial court declared a mistrial because the jury was unable to reach a verdict. The trial court sentenced appellant to serve nine years eight months in state prison. The sentence included a one-year prior prison term enhancement.

Appellant appeals, arguing: (1) the trial court erred by failing to conduct an in camera review in connection with his *Pitchess*² motion; and (2) the trial court committed error by failing to conduct a trial regarding the truth of the prior prison term allegation.

We find no *Pitchess* error and affirm the judgment as it relates to the convictions. We conditionally reverse the judgment as it relates to the enhancement because appellant was denied a trial on the prior prison term allegation. Upon remand, the trial court shall conduct a trial and determine whether the allegation is true. If it finds the allegation true, it shall reinstate the

¹ All further statutory references are to the Penal Code unless otherwise indicated.

² In *Pitchess v. Superior Court* (1974) 11 Cal.3d 531 (*Pitchess*), our Supreme Court created a procedure for a defendant to discover citizen's complaints against a peace officer. In 1978, the Legislature codified *Pitchess* in sections 832.7 and 832.8, and Evidence Code sections 1043 through 1045. (*People v. Jordan* (2003) 108 Cal.App.4th 349, 359.)

judgment. If it finds the allegation not true, it shall strike the enhancement from the sentence.

FACTS

The Crimes; the Arrest; the Police Report

A patrol car began following D.H. while he was driving his Chrysler Sebring in the desert near Lancaster. Appellant, who was in the passenger seat, saw the patrol car and panicked. He pointed a gun at D.H. This prompted D.H. to pull over to the side of the road. Appellant opened the door and started to get out. But then he got back in and told D.H. to keep driving. Because D.H. was afraid, he complied. Soon after, D.H. ended the situation by driving into a river bed and saying he could not go any farther.

Detective Sean Maloney and Deputy Adam Nelson of the Los Angeles County Sheriff's Department pulled over, exited their patrol car and approached the Chrysler, which was stuck in some sand. D.H. jumped out, approached them while holding his hands in the air, and said, "He has a gun. He has a gun. Help me." Meanwhile, appellant decamped with a gun in his hand. Deputy Nelson gave chase but appellant evaded capture for a while.

Eventually, Deputy Nelson observed appellant running down a road and detained him. When Deputy Nelson returned to the Chrysler, he conducted a search and retrieved a black backpack. It contained two unloaded magazines for weapons. Detective Maloney, Deputy Nelson, and a third officer with a gun of dog later searched the area for a gun but did not find one.

After appellant was arrested, he admitted the magazines in the backpack belonged to him.

The police report was prepared by Deputy Nelson. It set forth details of the encounter with D.H. and appellant, including that Deputy Nelson saw a gun and Detective Maloney at one point said, “He’s got a gun.” Also, it provided a synopsis of appellant’s statements, noting: “[Appellant] denied possessing a firearm and said he exited the vehicle with a dark colored ‘Bong.’ [Appellant] said he took the ‘Bong’ because it belonged to him and he didn’t want anyone to be accountable for his possessions. [Appellant] said he fled law enforcement on foot because [D.H.] told him to do so.”

The *Pitchess* Motion

Prior to trial, appellant filed a *Pitchess* motion to discover complaints against Detective Maloney and Deputy Nelson on topics such as fabrication of charges and evidence. Defense counsel submitted a declaration stating: The police report indicated that both Detective Maloney and Deputy Nelson saw appellant holding a gun. Appellant, in contrast, denied that he ever had a gun in his hands, either inside or outside the Chrysler. He was “carrying his special bong when he ran from deputies.”

The trial court denied the motion. It ruled that “the defense’s motion fails to set forth a specific factual scenario of officer misconduct that is plausible when read in light of pertinent documents.”

Trial; Posttrial Matters

The jury found appellant guilty on counts 1 and 3. Defense counsel requested a bench trial on the prior. Without holding a bench trial on the prior, the trial court proceeded to sentence appellant.

DISCUSSION

I. *Pitchess* Discovery.

To discover complaints against a peace officer, a moving party must establish good cause for compelling production. (Evid. Code, § 1043, subds. (a)-(b).)

A “showing of good cause requires a defendant . . . to establish not only a logical link between the defense proposed and the pending charge, but also to articulate how the discovery being sought would support such a defense or how it would impeach the officer’s version of events.” (*Warrick v. Superior Court* (2005) 35 Cal.4th 1011, 1021.) In addition, a defendant is required to articulate a plausible scenario of officer misconduct. (*Id.* at p. 1026). The scenario must be one “that might or could have occurred. Such a scenario is plausible because it presents an assertion of specific police misconduct that is both internally consistent and supports the defense proposed to the charge.” (*Ibid.*) If good cause is established, a trial court must examine the requested information in camera and determine whether the defendant is entitled to receive it in order to ensure a fair trial. (*City of Santa Cruz v. Municipal Court* (1989) 49 Cal.3d 74, 82–85.)

We will defer to a trial court and uphold its ruling on a *Pitchess* motion unless the record establishes that it abused its discretion. (*City of San Jose v. Superior Court* (1998) 67 Cal.App.4th 1135, 1145.) An erroneous denial of a *Pitchess* motion is subject to harmless error analysis. (*People v. Memro* (1985) 38 Cal.3d 658, 684.)

Appellant did not allege any misconduct by Detective Maloney and Deputy Nelson. At most, appellant implied that they falsely stated that he possessed a gun when in fact he only

possessed a bong. We need not decide whether this was sufficient to show good cause because even if there was error, appellant failed to demonstrate prejudice. The jury hung on the gun charge and it was dismissed. Appellant has not explained why the evidence sought would support a defense on count 1 or count 3, or why impeachment of the officers would be relevant as to the outcome of those counts. Regarding count 1, it was supported by D.H.'s testimony and would therefore not be impacted by impeachment of the officers. As to count 3, appellant has not denied culpability either below or on appeal, and there was no implication in his *Pitchess* motion that the count was the product of police misconduct.

II. The Prior.

A defendant has a right to a trial on the factual issues raised by a denial of a prior prison term allegation. (Cf. *People v. Cross* (2015) 61 Cal.4th 164, 172; § 1025.) Appellant was denied this right, which the People concede. The one-year enhancement for a prior prison term must be reversed and the matter must be remanded for a trial on the matter.

DISPOSITION

The judgment is affirmed as to the convictions.

The judgment is conditionally reversed as to the prior prison term enhancement and remanded for a trial. If the trial finds the prior prison term allegation true, it shall reinstate that portion of the judgment. If it finds the allegation not true, it shall strike the enhancement.

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_____, J.
ASHMANN-GERST

We concur:

_____, P. J.
LUI

_____, J.
CHAVEZ